

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	
)	
Re-examination of Roaming)	WT Docket No. 05-265
Obligations of Commercial)	
Mobile Radio Service Providers)	
)	
Automatic and Manual Roaming)	
Obligations Pertaining to)	WT Docket 00-193
Commercial Mobile Radio)	
Services)	

COMMENTS OF UNITED STATES CELLULAR CORPORATION

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COMMENTS

United States Cellular Corporation ("USCC") submits these comments in response to the Notice of Proposed Rulemaking in the above-captioned dockets.¹ USCC provides cellular and PCS service to over 5.2 million customers in 149 markets in 25 states. USCC's markets are predominantly suburban and rural in character and are increasingly concentrated in four regional clusters.

USCC's main regional concentration is in the Midwest, in the states of Illinois, Iowa, Wisconsin, and Missouri and it has recently sought FCC consent to acquire additional cellular markets in Kansas and Nebraska. USCC has other regional clusters, in upper New England, Oklahoma, the mid-Atlantic states, Tennessee and North Carolina, and in portions of Washington, Oregon, and Northern California. However, USCC is not a national carrier and its network does not cover the whole country. Its customers' continuing ability to "roam" on the networks of other carriers, particularly the "national" carriers, for voice and data services, will be

¹ See Memorandum Opinion and Order and Notice of Proposed Rulemaking, WT Dockets 05-263; 00-193, FCC 05-160, released August 31, 2005 ("NPRM").

vital to its ability to provide competitive services to customers in a wireless environment marked by ever increasing consolidation.

INTRODUCTION AND SUMMARY

USCC applauds the FCC's willingness to reconsider its roaming rules and policies in light of the increasing concentration of the wireless industry through the recent combinations of major carriers. In light of the diminishing number of "national" wireless carriers, the continued availability of roaming will be a crucial safeguard for competition, as it will help to preserve the existence of smaller, non-national competitors.

USCC asks that the FCC adopt a policy statement requiring that wireless carriers continue to make their networks available to the customers of other carriers for "automatic" roaming on reasonable terms and conditions. We also ask the FCC to require reasonable carrier accommodations to the data roaming needs of other carriers. We believe that such an incremental but firm approach will best reconcile the continuing need to maintain roaming availability and industry competition with necessary network autonomy and flexibility. We believe that Tier I wireless carriers have, for the most part, treated smaller, mid-sized and regional carriers such as USCC fairly in roaming negotiations, and that the present roaming marketplace does not justify a new prescriptive rule. However, we ask the FCC to scrutinize the roaming practices of the national carriers carefully in the coming years and adopt rules if necessary to preserve the availability of roaming for customers of small, mid-sized, and regional carriers. In USCC's view, absent a claim of discrimination or unfair treatment, direct FCC supervision of the multitude of individual intercarrier roaming arrangements would be undesirable. However, it would become a regrettable necessity if one or more Tier I carriers ceased to provide roaming opportunities to smaller carriers.

Moreover, we also believe that the FCC's existing "manual" roaming rules are inadequate to provide the necessary assurances of roaming availability. USCC also supports reasonable accommodation by "roamed upon" systems to the technological needs of their roaming partners, while not supporting FCC micromanagement of all roaming arrangements.

BACKGROUND

As the FCC notes in the NPRM (§ 26 n. 68), USCC has opposed an "automatic roaming" rule in prior FCC proceedings.² In comments filed in 1988 and 2001, USCC argued that an automatic roaming requirement was unnecessary and premature in light of thriving wireless competition. We also maintained that such a requirement might result in undesirable FCC interference with complex roaming arrangements and might undermine carrier anti-fraud efforts. USCC also noted that the FCC had recently adopted costly regulatory mandates such as number portability, Universal Service payments and "enhanced 911" requirements, and argued that the FCC should not add additional costly regulations at that time.³ While we continue to believe that the FCC should not adopt new formal regulations concerning roaming at this time, we do believe that a strong policy statement is now appropriate, for the reasons given below.

I. The FCC Should Adopt a Policy Statement in Favor of Automatic Roaming on Reasonable Terms and Conditions.

When USCC expressed its opposition in 2001 to the FCC's adoption of any "automatic roaming" requirement, we also asked that the FCC maintain "a careful and vigilant watch" over the national roaming issue and "revisit" it in the future if small, mid-sized or regional carriers were prevented by the national carriers from obtaining acceptable roaming contracts.⁴ In light of

² See, e.g., USCC Comments in CC Docket No. 94-54, filed January 5, 1988; USCC Comments in WT Docket No. 00-193, filed January 5, 2001.

³ USCC January 5, 1998 Comments, pp. 2-4.

⁴ USCC January 5, 2001 Comments, pp. 1.

present competitive realities, and likely future trends, we now believe that the FCC should take a stronger position in support of roaming rights, and one that is broad enough to cover the continuing evolution of carrier and network offerings, while stopping short of new prescriptive rules.

The FCC's most recent report on competition in the wireless industry⁵ concludes that "even with fewer nationwide mobile telephone carriers there is still effective competition" in the wireless industry. With respect to wireless pricing, the report states that there is "a competitive marketplace," though certain of the "indicators" used by the Commission showed a "slight increase" in the cost of mobile services in 2004.⁶ However, the Tenth Report also discerned a potential danger to competition from a "more concentrated" wireless market structure emerging as a consequence of the merger of Cingular Wireless with AT&T Wireless.⁷

Those dangers to competition, owing to the increasing size and power of the national and other Tier I carriers relative to rural, mid-sized and regional carriers, will only be increased by the 2005 mergers of Sprint with Nextel and of Alltel with Western Wireless. Those combinations have further reduced the number of Tier I wireless carriers and both occurred after the 2004 deadline for consideration in the Tenth Report. Moreover, SBC has recently absorbed AT&T and Verizon and MCI will shortly merge, which together will mark the end of an era in American telecommunications. Obviously, the loss of those two companies will result in further concentration of scale and scope in the hands of the two surviving giants of the U.S. telecommunications industry, SBC (assuming the name of AT&T) and Verizon.⁸

⁵ In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Tenth Report, WT Docket No. 05071, FCC 05-173, released September 30, 2005 ("Tenth Report").

⁶ Tenth Report, ¶¶ 5, 97.

⁷ Ibid.

⁸ See, e.g., In the Matter of Applications of Western Wireless Corporation and ALLTEL Corporation For Consent to Transfer Control of License and Authorizations, Memorandum and Order, WT Docket No. 05-50, FCC 05-138,

The Tenth Report devoted little attention to roaming, as either a safeguard or an indicator of competition. In two paragraphs, the FCC described the structure of the wireless roaming marketplace and noted an increase in overall roaming revenue, while marking a continuing decline in roaming revenues as a percentage of overall carrier revenues.⁹ In a footnote, the FCC also noted a decline in the per minute roaming charges paid to small and regional carriers, which obviously reflects the growing market reach and power of the national carriers, which increasingly either do not need such roaming partners, or need them less than the non-national carriers need the national carriers to extend their service territories.¹⁰

However, this relative lack of attention to roaming as a safeguard of competition in the Tenth Report contrasts sharply, for example, with the competitive justifications for their merger put forward by ALLTEL and Western Wireless. Those companies argued that their merger would serve the public interest in part because it

"will provide a business base broad enough for ALLTEL to consider the deployment of additional technologies (e.g. GSM) that will expand the availability of automatic roaming agreements in rural areas in the United States."¹¹

The application also argued that by enlarging its footprint ALLTEL would become a "more attractive roaming partner" for other carriers and promised that ALLTEL would "explore steps" to increase roaming opportunities "for other carriers," including a possible GSM overlay for the benefit of roamers.¹² The applicants concluded by advising the FCC that:

released July 19, 2005, In the Matter of Applications of Nextel Communications, Inc. and Sprint Corporation For Consent to Transfer Control of Licenses and Authorization, Memorandum and Order, WT Docket No. 05-63, FCC 05-148, released August 8, 2005; Press Release, "FCC Approves SBC/AT&T and Verizon/MCI Mergers," released October 31, 2005; "New AT&T Makes Its Debut A Day After FCC Releases Merger Order", Telecommunications Reports, November 18, 2005, p 3.

⁹ Tenth Report, ¶¶ 128, 129.

¹⁰ Ibid., ¶ 128 n. 308.

¹¹ Exhibit 1 to ALLTEL-Western Wireless Lead Application, pp. 4, 7.

¹² Exhibit 1 to ALLTEL-Western Wireless Application, p. 7.

"[t]he transaction, therefore, has the potential to benefit not only ALLTEL and the WWC's existing subscribers, but also wireless customers of other carriers as well since they would benefit from expanded roaming agreements and from ALLTEL as a more effective wireless competitor."¹³

Thus, according to the applicants, a primary public interest justification for allowing the merger was the facilitation of roaming on the merged system by the customers of other carriers.

Sprint and Nextel made little explicit reference to roaming in their application but its continued existence underpinned their public interest/competition showing as well. Sprint and Nextel argued that the merger would strengthen the merged entity as a competitor by improving the service quality of the new entity, would allow for efficient deployment of broadband infrastructure, and would promote effective use by Sprint Nextel of previously underutilized authorizations in the 2.5 GHz band.¹⁴

The applicants maintained that wireless competition would not be harmed by the merger and would remain robust, as indicated by prior reductions in wireless prices to consumers¹⁵ and argued that competition would also be protected by future auctions of new spectrum, as well as such FCC policies as partitioning, disaggregation, and "secondary markets."¹⁶

Most importantly for the current proceeding, Sprint and Nextel argued that, from a competitive standpoint, there

"will continue to be four national carriers, as well as a substantial number of MVNOs and regional and local providers from which consumers will be able to take their wireless service." (emphasis added).¹⁷

¹³ Exhibit 1, to ALLTEL Western Wireless Application, p. 8.

¹⁴ Nextel-Sprint Lead Application, Exhibit 1 pp. 4-53.

¹⁵ Exhibit 1, p. 65.

¹⁶ Ibid.

¹⁷ Exhibit 1, p. 66.

The continuing existence of those competitors was obviously crucial to the application's analyses of the "relevant product market" and "relevant geographic market," which used technical antitrust tools such as the Herfindahl-Hirschman Index to conclude that the merger would pose no threat to competition, showings upon which the FCC relied in granting the application.¹⁸ Similarly, the application's demonstration of the absence of any adverse "unilateral" or "coordinated" effects from the merger was dependent on the assumption that there would be a sufficient number of competitors, including "regional competitors," to "absorb" hypothetical Sprint Nextel customers seeking to escape possible future price increases or for such carriers to function as "mavericks" if Sprint Nextel were to collude with other carriers to raise prices.¹⁹ Lastly, Sprint and Nextel's charts demonstrating that the merged company would not hold excessive spectrum in any BTA²⁰ were of course dependent for their future validity on the continuing health of their local wireless competitors in each of the listed markets.

Crucial to any FCC public interest determination in assessing a proposed wireless carrier merger is whether that combination will promote and enhance competition. And, for there to be competition, there must be healthy competitors, as those requesting approval for wireless mergers have repeatedly recognized, whether explicitly or implicitly. And for those competitive carriers to survive and thrive, the right to roam is essential.

The reasons for that are obvious. "Automatic" roaming allows smaller, mid-sized and regional carriers to provide a wireless service which works "seamlessly" for their customers throughout the United States. Without automatic roaming, the customers of such carriers are relegated to "manual" roaming, which is an entirely unsatisfactory (and essentially non-existent) substitute, for reasons discussed below. For smaller, mid-sized and regional carriers,

¹⁸ Exhibit 1, pp. 70-75.

¹⁹ Exhibit 1, pp. 73-76, especially pp. 82-83.

²⁰ See Attachments, G H, and I to Exhibit 1

maintaining the existence of automatic roaming at reasonable rates is crucial to their ability to hold their customers and maintain their profitability, both of which are vital to their economic survival. Thus, the FCC should design policies which protect and enhance the right to automatic roaming. Moreover, it is vital that the national carriers accommodate the roaming needs of small, mid-sized and regional carriers on a timely basis and that the roaming experience of such carriers' customers be comparable to that of customers of the national carriers.

What is needed to accomplish that, we believe, is an FCC policy statement to the effect that the national carriers must enter into and maintain automatic roaming agreements with small, mid-sized and regional carriers on reasonable terms and conditions. The FCC should also make clear that a refusal to do that on the part of a national carrier²¹ would be treated as an unjust, unreasonable, and discriminatory practice under Sections 201 and 202 of the Communications Act [47 U.S.C. Sections 201 and 202], which would be followed by swift enforcement action.²²

USCC does not ask the FCC to supervise or micromanage negotiations or roaming agreements between carriers -- unless a national carrier has failed to agree to reasonable roaming terms. What we ask is a clear and strong statement of principle by the FCC to the effect that the availability of roaming for the customers of small, mid-sized and rural wireless carriers on the systems of the national carriers will be crucial to the maintenance of wireless competition for the future and that the FCC will act under its statutory authority to maintain such availability.

²¹ USCC also believes that mid-sized and regional carriers should enter into roaming agreements with smaller carriers. But the health of the roaming marketplace will be determined by the actions of the national carriers.

²² The FCC has, in the past, adopted enforceable requirements under its statutory authority by means of "policy statements. "See, e.g., Joint FCC/FTC Policy Statement for The Advertising of Dial-Around and Other Long Distance Services To Consumers, 15 FCC Rcd 8654(2000) [Action taken pursuant to Section 201(b) of the Communications Act, 47 U.S.C.]; In the Matter of Nos Communications, Inc. and Affinity Network Incorporated, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 8133 (2001); In the Matter of Industry Guidance on The Commission's Case Law Interpreting 18 U.S.C. Section 1464 and Enforcement Policies Regarding Broadcast Indecency, Policy Statement, 16 FCC Rcd 7999 (2001).

USCC made similar requests in the context of the AT&T Wireless/Cingular merger as well as the ALLTEL-Western Wireless and Sprint-Nextel mergers,²³ which comments, along with those of others, have led to this proceeding.²⁴ The time is now ripe for Commission action. The FCC ought to act to help preserve the existence of small, mid-sized, and regional carriers and help them attract customers and remain prosperous, which will, in turn, enable such carriers to provide as much price and service discipline for the larger carriers as possible. Such non-national carriers cannot survive without easy roaming access to the national carriers, and, as all carriers develop advanced data services, such data services ought to be part of roaming agreements, as the necessary technology is developed to accommodate such services.

II. Response to Specific NPRM Questions.

A. The FCC's Manual Roaming Policy Is Inadequate To Protect The Roaming Needs of Small Carriers.

USCC, in responding to some of the specific questions asked by the NPRM, will provide an approach to certain aspects of the policy statement which we request that the FCC adopt.

Much of the first part of the NPRM is taken up with a description of the history of the FCC's present manual roaming rule and a recapitulation of the FCC's discussion of that rule in the recent Sprint-Nextel and ALLTEL-Western Wireless merger approval orders.²⁵ In USCC's view, while the manual roaming requirement can be useful on the rare occasions when a wireless subscriber must find a way to roam and his or her carrier has no "automatic" roaming agreement with a technically compatible local wireless carrier, it does not provide a solution to the problem of ensuring a level of roaming availability which is competitive with the automatic network services provided by national carriers on their own networks. Manual roaming is simply not

²³ See, AT&T Wireless Services, Inc. and Cingular Wireless Corporation Memorandum Opinion and Order, 19 FCC Rcd 21522, 21586-21592 (2004) ("Cingular/AWS Order").

²⁴ NPRM, ¶¶ 13-17.

²⁵ NPRM, ¶¶ 4-10, 16, 21-24.

used by customers. For example, the number of either outbound or inbound "manual" roaming minutes as a percentage of USCC's total roaming minutes is infinitesimal. Indeed, fewer than 1% of USCC's roaming revenues come from manual roaming.

In the present communications marketplace, in which wireless service is considered a necessity of life by many users and where wireless subscribers often average 500 or more minutes of use per month, wireless handsets must function seamlessly across the country. Customers are no longer willing, if they ever were, to place an initial call to a local carrier to validate their credit and then place a subsequent call. Thus, the only possible competitive safeguard for non-national carriers lies in protection of "automatic" roaming on national carriers' systems.

B. The FCC Must Require Automatic Roaming But Not Require "Roamed Upon" Systems To Modify Their Networks In An Unreasonable Way.

The NPRM (§ 28) seeks information about the potential costs as well as the benefits of an automatic roaming requirement, asking, inter alia, whether such a rule would impede the development of new and improved roaming features and whether new services which have been developed over the past few years in the absence of such a requirement would have come into being had it been in place. The Commission also seeks comment on the impact of technical compatibility issues in an automatic roaming environment. Paragraph 30 of the NPRM indicates a desire not to require "roamed upon" systems to change their technology to accommodate roamers. However, the NPRM also indicates it may be necessary for a roamed upon system to take "reasonable actions" to facilitate another carrier's efforts to access their system.

USCC believes that the FCC should make clear its expectation, backed by a credible promise of enforcement action, that carriers should permit automatic roaming by the customers of other carriers which use compatible technology. However the FCC should not adopt a rule

which could be used by carriers to force unreasonable technological expenses on other carriers. We believe that the FCC should also not regulate roaming rates, except to state that such rates should be reasonable and reasonably symmetrical between two carriers. The FCC should state its expectation that carriers must facilitate roaming on reasonable terms and conditions, without specifying in advance what those terms and conditions will be in particular cases. However, the Commission must be prepared, on a case by case basis, to examine and resolve contested terms and conditions in the event of disputes.

C. The FCC Should Not Adopt Any Regulation Regarding "Like" Roaming Agreements Or Restrictions on Agreements Among "Affiliates."

Paragraphs 33-37 of the NPRM discuss the possible impact of an automatic roaming rule on roaming agreements between carriers. Should all carriers be required to make "like agreements" available to "similarly situated" providers with technically compatible handsets? The Commission notes that such a rule could prevent larger carriers from entering into favorable agreements with select providers, while unreasonably denying such agreements to smaller, but otherwise similarly situated, carriers.

USCC believes that the FCC need not incorporate such a requirement into its policy statement at this time. Agreements between carriers may be "like" in some respects and "unlike" in others. Adjudicating what constitutes a "like agreement" would generally not be productive. Again, the FCC should require roaming on reasonable terms and conditions, but should not assume that all unlike terms are unreasonable. On the other hand, too great a disparity in such terms and conditions, particularly if used to harm a small, mid-sized, or regional carriers, would be evidence of unreasonableness and discriminatory conduct.

The NPRM (§ 36) also requests comment on whether providers should be permitted to offer roaming agreements to "affiliates" on different terms and conditions than to non-affiliates

and on whether "favoritism" to affiliates constitutes unreasonable and discriminatory behavior. USCC believes that carriers should be able to "favor" their affiliates under common ownership in the roaming context. Licensees should be free to direct their own roaming traffic to affiliated licensees in other markets, while still being required to welcome roamers on their own systems. Being able to have its customers roam on other carriers' systems will be crucial to a non-national carrier's economic health and ability to carry out its business plan, as well as to being able to offer its customers national and regional service packages.

D. The FCC Should Include Data Roaming In Its Policy Statement.

In Paragraph 37 of the NPRM, the FCC discusses an issue which USCC has raised in the context of recent wireless mergers, namely the need to expand roaming access to push to talk, dispatch and other data roaming services. The Commission has asked whether denial of roaming access to such services harms competition and if so, asks whether an automatic roaming rule could be crafted to address the issue of data roaming.

The pace of data service developments make it appropriate for the FCC to focus on this issue now, at least in policy terms. USCC, for example, currently offers many wireless data products, through CDMA 1xRTT technology and is now experimenting with CDMA 1xEV-DO technology. The majority of USCC customers now have 1xRTT equipped phones, wireless modems or PDAs that can download multiple applications, including games, news, sports information, ring tones and stock quotations. Other carriers are developing their own wireless data products. Such products represent a meaningful part of wireless usage and revenues today and the proportion is expected to increase in the future. Thus, it is urgently necessary that carriers, and especially national carriers, be required to facilitate the use of such data applications for roamers. The Commission should make it clear that it believes carriers must work to develop appropriate interfaces to ensure that data roaming can take place along with voice roaming.

USCC is now seeking to negotiate data roaming agreements with larger carriers, and has negotiated such an agreement for 1xRTT technology with Verizon Wireless. Similarly situated regional, mid-sized and small carriers are certainly seeking to do likewise. However, 1xRTT technology is only one step along a path of continual technological evolution. EV-DO and other technologies are already being deployed in carrier networks and the FCC's policy statement should clearly apply to each step of future technology evolution.

Therefore while USCC would acknowledge that the development of data roaming is in its infancy, nonetheless we believe that the FCC should now adopt a clear and strong policy in support of data roaming on fair terms. However, as noted above for voice roaming, the Commission should not adopt a rule which might result in litigation over every roaming arrangement. But following the adoption of the proposed policy requiring roaming, the national carriers' compliance with that policy should be reviewed by the FCC periodically, perhaps in connection with the existing annual wireless competition report. The national carriers should be given the opportunity to demonstrate that they will continue to behave fairly to smaller carriers before the FCC takes further rule-making action, but that action should be always be a possibility.

E. The FCC Should Ensure That Rural Carriers Are Treated Fairly In the Overall Roaming Context.

The FCC requests that commenters pay special attention to rural carriers' concerns (NPRM, ¶¶ 38-42). The FCC notes that small and rural carriers often assert that the amount of roaming traffic they carry has been significantly reduced, as large carriers expand their systems, enter into roaming agreements with other larger carriers and otherwise avoid roaming on smaller carriers' networks.

USCC believes that smaller and rural carriers have a right to roam at reasonable rates on the systems of larger carriers. One rural commenter, RTG, has asserted that larger carriers have previously required its members to pay five times more to roam on their systems as the larger carriers are willing to pay to roam on RTG's system. Such a situation would be an abuse which the FCC should find to be unreasonable and unlawful. Roaming rates should be reasonable and approximately symmetrical.

F. The FCC Should Require Reasonable Carrier Accommodation To Technological Developments In The Roaming Context.

Lastly, the FCC requests comment on the technical aspects of any automatic roaming requirement (NPRM, ¶¶ 44-49). For example, should automatic roaming requirements be applied to 2.5 G and 3 G systems as well as 2 G systems? Also, the FCC asks whether carriers should be required to enter into roaming agreements only with carriers which have upgraded their systems to comparable levels? Would such agreements be required between carriers which employed the same digital technology (e.g. GSM or CDMA) even if both carriers had not upgraded their systems to the same technical level? USCC believes that the FCC's policy should require flexibility in order to ensure that national carriers will accommodate other carriers which may not have brought their systems to the same technology level, but between which carriers the technology is still fundamentally compatible. "Level" determinations should not be an excuse for not allowing automatic roaming.

The FCC also seeks comment on the impact that automatic roaming would have on the capacity of 2.5 and 3 G networks and on the ability of carriers to offer full access to their own customers if they have to offer roaming services to all other compatible carriers. We stress that this consideration is not unique to 2.5 or 3G. We believe that as long as pricing and other terms are reasonable, that carrier costs to accommodate roaming would be recovered. Accordingly,

national carriers would be compensated for any added capacity used by their roaming partners. USCC would also note that roaming represents a small percentage of traffic on its own network and, we believe, an even smaller percentage of traffic on the networks of the national carriers. We therefore believe the potential for a major capacity issue is remote.

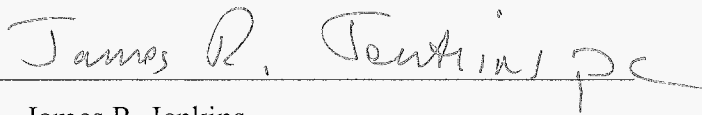
The development of 2.5, 3, and 4 G technologies will involve issues of great importance to the future of every wireless carrier in this country. But it is not possible to resolve such issues now. With respect to these questions, the FCC should restate the general principle that carriers and their customers have a right to roaming arrangements on reasonable terms and conditions and should declare that carriers, and especially national carriers, must make reasonable technical accommodations to other carriers in the roaming context for each generation of technology. It will be urgently necessary to re-assess carriers' adherence to this policy at periodic intervals, as 3G systems come fully into existence.

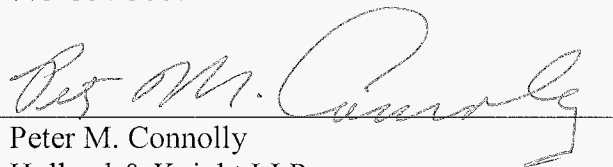
CONCLUSION

For the foregoing reasons, USCC recommends that the FCC adopt a policy statement which: (1) provides a right to voice and data roaming on reasonable terms and conditions and emphasizes the need for national wireless carriers allow roaming by the customers of their non-national competitors; and (2) requires carriers to reach fair roaming agreements which make mutual commercial sense. We ask that the FCC continue to place the rights of wireless customers first and that the FCC continue to help ensure that small, rural, and mid-sized carriers remain viable competitors to the national carriers.

Respectfully submitted,

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